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tent, should not be permitted afterwards to sue in tort for the balance due him, has been given much weight by the court in several cases. See, under Act of 1841, *Chapman* v. *Forsyth,* 2 How. 202; under the Act of 1898 before the amendment of 1903, *Crawford* v. *Burke,* 195 U. S. 176; since that amendment, *Standard Varnish Works* v. *Haydock,* 143 Fed. 318; but the holding of the principal case is now well established

BILLS AND NOTES—WANT OF FUNDS AS EXCUSE FOR FAILING TO GIVE NOTICE OF PROTEST.—Where the maker had no funds or right to draw on the drawee bank, either at the time the check was drawn or when it was presented for payment and protested, such want of funds was prima facie an excuse for want of notice of protest to him. *Gibbs* v. *Hopper,* (Ark. 1913) 160 S. W. 879.

The decision of this case is correct as far as it goes, but it stops short of what is the law upon this subject. The drawer of a check or of a bill is a party secondarily liable, so that presentment and notice of dishonor is essential to fix his conditional liability. But there is a distinction between the liability of a drawer of a bill without funds in the hands of the drawee and the drawer of a check under the same circumstances. The drawing of a bill without funds in the hands of the drawee makes the drawer only presumptively liable as a primary party, his drawing being only prima facie fraudulent, and this presumption is capable of being rebutted, so that he is entitled to notice. But where the drawer of a check has no funds in hands of drawee, the drawing is conclusively presumed to be fraudulent, he is liable as a primary party and hence not entitled to notice. *Dolph* v. *Rice,* 18 Wis. 418; *Harker* v. *Anderson,* 21 Wend. 372; *First National Bank* v. *Linn, et al,* 30 Ore. 296; *Industrial Bank* v. *Bowes,* 155 Ill. 70; *Kinyon* v. *Stanton,* 44 Wis. 471; *Morrison* v. *McCartney,* 30 Mo. 183; *Gregg* v. *George,* 16 Kan. 546; *Thornberg* v. *Emmons,* 23 W. Va. 325; *Purcell* v. *Allemono,* 22 Gratt. 743. Hence the decision of the instant case that the want of funds was only prima facie an excuse for want of notice of protest to the drawer, does not observe the above distinction, and therefore is not broad enough in its statement of the legal principles governing the facts therein adjudicated.

BOUNDARIES—DESCRIPTION—PUBLIC HIGHWAYS.—In a controversy in a a street improvement case as to appellee's right to an award, it appeared that the deed by which she acquired title described the premises as follows: "Beginning at the northwesterly corner of Walnut St. and Second Ave.; thence running westerly along said street fifty ft.; thence parallel with said avenue one hundred ft.; thence easterly parallel with said street fifty ft.; to said ave.; thence southerly along said avenue one hundred ft. to corner aforesaid and place of beginning." The granting of the award depended upon whether the deed carried title to the center of Walnut St. or only to the exterior line. *Held,* the words were explicit enough to rebut the presumption of a grant to the middle of the street, and the deed only carried title to the exterior line. *In re Parkway in the City of New York* (N. Y. 1913), 103 N. E. 508.

The precise question raised in this case is one upon which there is much

diversity of opinion in the courts of this country. There seems to be no question that a grant of a lot abutting on a highway, with no words of description limiting the boundary at the edge of the street, passes title to the center of the street, when the fee of the street is in the grantor. 3 WASHBURN, REAL PROP. (4th ed.) 422 et seq. As to what expressions in a description will be sufficient to prevent the operation of the "center rule" the cases are not agreed. The decision in the principal case, it is submitted, does not enunciate the most politic rule, although it is supported by the decisions of a great many states. *Eng.* v. *Brennan,* 60 N. Y. 609; *Mead* v. *Riley,* 18 Jones & S. 20; *Grand Rapids & Ind. R. R. Co.* v. *Heisel,* 38 Mich. 62; *Severy* v. *C. P. R. R. Co.* 51 Cal. 194; *Hanson* v. *Campbell,* 20 Md. 223; *Buck* v. *Squiers,* 22 Vt. 484; *Hughes* v. *P. & W. R. R. Co.,* 2 R. I. 508; *Contra, Johnson* v. *Anderson,* 18 Me. 76; *O'Connell* v. *Bryant,* 121 Mass. 557; *Cox* v. *Freedly,* 33 Pa. St. 124. See 13 HARV. L. REV. 150. Some cases go so far as to say that the fee to the center of the street will pass even though the lot is described by measurements which can only include land to the edge of the street. *Newhall* v. *Ireson,* 8 Cush. 565; *Grant* v. *Moon,* 128 Mo. 43; *Geer* v. *Barnum,* 37 Conn. 229; *Durbin* v. *Roanoke Bldg. Co.,* 107 Va. 753. See 8 MICH L. REV. 330. Probably the most extreme rule is laid down by the Pennsylvania court in *Paul* v. *Carver,* 26 Pa. St. 223. The description in that case read, "Along the northerly side of said street," and the court in holding that the fee in the street passed to the grantee, laid down the doctrine, (1) that nothing short of an intention expressed *in ipsis verbis* to "exclude" the soil of a highway, can exclude it, (2) that it is doubtful whether such a contract would not be against public policy and void; and whether the highway to the center would not pass notwithstanding. This case was approved and followed in *Salter* v. *Jonas,* 39 N. J. L. 469. See 2 SMITH LEADING CASES, 165, (7th ed.)

BREACH OF PROMISE OF MARRIAGE.—Defendant promised to marry plaintiff in June, 1911. The marriage was postponed and in May, 1912, the defendant broke the engagement by letter. In this letter the defendant alleges as an excuse for his conduct that having prayed for guidance, he had received a command from above that it was God's will that the engagement be broken off. The court held that though this excuse might ease the defendant's conscience, it has no weight in law as a defense to plaintiff's claim for damages. *Hiveley* v. *Golnick,* (Minn. 1913) 144 N. W. 213.

The courts evidently regard conscience as an unsafe guide, once the compact has been entered into. The doctrine of the court in the principle case has sanction in the decision in the case of *Coolidge* v. *Neat,* 129 Mass. 146. The defendant admitted the promise made to marry the plaintiff but testified that long before he left her he concluded they could not be happy together and that he left her in the belief that it was for the happiness of both. It was held that the defendant's assumption of the right to recede from the contract when, for conscientious reasons alone, he felt disinclined to fill it, was not justified, and he must live up to the promise or pay damages.